



(57)

GA 2125/2

(2)

Division Bench (Criminal)

- APPEAL OF PRISONER -

No. 489

Name भाडवी भीमा

Father's Name हडमा

Resident गाव - कोन्हासावली

Age 32 Sentenced to भाजीवन कारावास

जिला - जगदलपुर, बलार

on 10/8/96

Under Section 302 I.P.C.

by इथान अति. सह न्याया. जगदलपुर

S.T. No. 95/93

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 10/8/96
3. Date on which appeal sent :- 30/8/96
4. Whether the prisoner wished to be represented or not. ☒ Yes/No

No. 489

Name भाडवी भीमा पिता हडमा

Continued in जिला

Jail जगदलपुर

No. 400

/ अटलकोटा

Dated 30/8/96

Forwarded to the C.J.M. JUDICIAL MAGISTRATE Jhagdalpur together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent - Central/Distt/Sub-Jail.

Date of receipt in C.J.M.'s Office. 12/9/96

Date of receipt of record to accompany. x

Memo of Appeal of the Appellate Court. x

No. 17(1) dated 16/9/96

Forwarded to the H'ble Sessions Judge Raigarh

C.H. MAGISTRATE

Date of receipt in Appellate Court:

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक
 Csi. A. No. 2125/96
 मामला क्रमांक 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	D.B. : HON'BLE SHRI LAL CHAND BHADOO, J. AND HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J. 23-12-2005 Mr. R.K.Jain, counsel for the accused/appellant. Mr. Akhil Mishra, Panel Lawyer for the respondent/State. Heard. <u>ORAL JUDGMENT</u> 1. By this appeal, through Superintendent, District Jail, First Class, Jagdalpur, the accused/appellant Madvi Bhima has questioned the legality of judgment of conviction and order of sentence dated 10-8-1996 passed by Ist Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.95/93, whereby the learned Ist Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक -2- सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2. The case of the prosecution, in brief, is that, on 13-6-1992 at about 4 P.M., the accused Madvi Bhima and Uika Bhima came to the house of Hemla Somlu, P.W.-2. They started saying to Hemla Somlu that he is outsider. He has settled in their village and he is cultivating the land of the villagers, therefore, he should leave the village. Upon which, Hemla Somlu replied that, he is residing in the village since last so many years, therefore, he will not leave the village. Upon which, the accused persons started assaulting Hemla Somlu with club. Thereafter, they left the house. At about 8 O'clock in the night, when the deceased Hemla Mase, after taking dinner, went to wash her hands, the accused Madvi Bhima shot her with an arrow on her stomach. The arrow pierced near the navel in her stomach, as a result of which, blood started oozing out of it and intestine came out of it. Her husband Hemla Somlu pulled out the arrow. In the morning of the next day, Hemla Mase was taken to Police Station, Jagargunda, where she lodged a report, Ex.P-6. Thereafter, she was sent to the Hospital, where Hemla Mase succumbed to the injuries. On 14-6-1992,	

[पीछे देखिये]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक 3 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Merg Intimation, Ex.P-7 was registered. Jaidev Singh Yadav, the Sub-Inspector of Police went near the Rest House of Jagargunda, where he saw the dead body of Hemla Mase. After giving notice, Ex.P-8 to the Panchas, he prepared a Panchnama, Ex.P-9 of the dead body. Thereafter, he sent the dead body to Primary Health Centre, Jagargunda for post mortem under Ex.P-11. He also took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-12. After completion of the investigation, a charge-sheet was filed in the Court of Judicial Magistrate First Class, Jagdalpur, who, in turn, committed the case to the Sessions Judge, Jagdalpur, wherefrom learned Ist Additional Sessions Judge, Jagdalpur received the case on transfer for trial. 3. The prosecution, in order to establish the charge against the accused, examined 8 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, in which the accused denied the prosecution evidence and stated that he has been implicated in a false case. The	

[पीछे देखिये]

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक 4- सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	accused Uika Bhima son of Mangdu Muriya died during the trial, therefore, the trial proceeded against the accused Madvi Bhima only. 4. After hearing the arguments of learned counsel for both the parties, the learned Ist Additional Sessions Judge convicted and sentenced the accused Madvi Bhima as mentioned in para 1 of this judgment. 5. We have heard Mr. R.K.Jain, learned counsel on behalf of the accused/appellant and Mr. Akhil Mishra, Panel Lawyer on behalf of the respondent/State. 6. Mr. Jain, learned counsel for the accused/appellant, argued that, as per the report, Ex.P-6, lodged by the deceased Hemla Mase, the arrow was shot by Uika Bhima, who has⁶ already died during the trial. The evidence of P.W.-2, Hemla Somlu, the husband of the deceased and P.W.-3, Hemla Joga is not correct	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक

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सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	and they have adduced the evidence contrary to the dying declaration made by the deceased, in which she stated that the accused Uika Bhima was the person who shot the arrow on her stomach, whereas these witnesses have stated that the arrow was shot by the accused Madvi Bhima and from their cross-examination it is clear that both these witnesses were inside the house and it was not possible for them to witness the crime and in these circumstances the F.I.R. lodged by the deceased herself has to be given weightage in comparison to the evidence of these witnesses. 7. On the other hand, Mr. Mishra, learned Panel Lawyer for the respondent/State, supported the judgment of the trial Court. 8. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the evidence of P.W.-2, Hemla Somlu and P.W.-3, Hemla Joga as well	

[पीछे देखिये]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	as the F.I.R., Ex.P-6 lodged by the deceased herself. Perusal of the F.I.R., Ex.P-6 shows that, Uika Ila shot the arrow from front of the house of the deceased which pierced in her stomach on the right side of the navel and blood started oozing out of it. When her husband Hemla Somlu and mother-in-law Jimme came out, the accused persons ran away, whereas P.W.-2, Hemla Somlu has stated that the accused shot the arrow which pierced in the stomach of his wife Hemla Mase. In the cross-examination, he has stated that, he was taking his meal in his house and his wife after taking dinner came out for washing her hands. At that time, 2-3 persons came in front of his house and it is incorrect to say that he could not see the accused as he was taking meal inside the house. He has further stated that, it is correct to say that when his wife started crying, he, after hearing the cries of her wife, came out and at that time, 3-4 persons, who had come with Axe ran away. The incident happened in the night and the night was dark. When his wife was washing hands in the courtyard, the arrow was ~~shot~~^{shot} on her body and she became unconscious. P.W.-3, Hemla Joga, in his	

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आदेश पत्रक

मामला क्रमांक

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विरुद्ध

सन् 200

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	examination-in-chief, has stated that, Madvi Bhima shot the arrow and his house is near the house of Hemla Somlu, the husband of the deceased and he was watching from his house and he saw Madvi Bhima shooting the arrow. In para 3 of his cross-examination, this witness has stated that, the incident was of the evening when 3-4 persons came to the house of Somlu, among them Uika Dula and Uika Bhima were there. Thereafter, in the night, when he had gone for sleeping after taking dinner, he woke up after hearing the sound and when he came out of the house, accused was not there and he ran away and the arrow was in the stomach of the deceased and she was lying down in the courtyard. Therefore, if we look into the evidence of P.W.-3, Hemla Joga, we find that, in fact he was sleeping in the house after taking dinner and he woke up after hearing the sound and by that time he reached the house of the deceased the accused had already run away and he saw Hemla Mase lying in the courtyard. It is also admitted fact that the incident took place in the dark night. P.W.-2, Hemla Somlu, the husband of the deceased has stated that, he	

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आदेश पत्रक

मामला क्रमांक — 8 — सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	was taking meal in his house and when his wife after taking dinner went to wash her hands in the courtyard, there the arrow was shot on her and 2-3 accused persons came and when his wife started crying then he came out. In view of the above evidence of this witness also, when the dark night was there and he was taking dinner inside the house, it cannot be said that, he, in fact, saw the person who shot his wife with the arrow. In the light of evidence of these two witnesses, weightage has to be given to the F.I.R., Ex.P-6 lodged by none other than the deceased herself, in which it has been mentioned that, Ila Dula shot the arrow which pierced in her stomach. Therefore, in fact, there is no legal evidence by which it can be held that the accused Madvi Bhima was the author of the crime in question and he shot the arrow which pierced in the stomach of the deceased, and the other accused Uika Bhima has already died during the trial. 9. Therefore, we are of the considered opinion that, the finding of the trial Court, convicting and sentencing the	

[पीछे देखिये]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक

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सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	accused/appellant for commission of the offence under Section 302 of the Indian Penal Code, is not based on the legal evidence and, therefore, cannot be sustained. 10. In the result, the appeal succeeds and is allowed. The conviction and sentence passed against the accused/appellant are set aside and accordingly the accused/appellant is acquitted of the charge of Section 302 of the Indian Penal Code. He be set at liberty forthwith, if not required in any other case. Sd/- L.C. BHADOO Judge	Sd/- V.K. Shrivatava Judge

G.Singh

[पीछे देखिये]

3/1/06